

Administrative Rulemaking

A PROCEDURAL GUIDE



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A MESSAGE FROM THE ATTORNEY GENERAL

The Nevada Legislature grants almost every department, agency, board and commission the authority to adopt administrative regulations. Administrative regulations take into consideration complex and technical issues that are not addressed in our state statutes. The process of adopting administrative regulations allows the public to provide input into the how the laws passed by the legislature should be implemented. To help those involved with the process of adopting administrative regulations, the Office of the Attorney General offers training classes and has prepared this manual: ADMINISTRATIVE RULEMAKING - A PROCEDURAL GUIDE. This manual is intended to provide an easy to understand explanation of the steps required to adopt administrative regulations. I hope it serves as a useful tool and reference guide for Nevada's citizens.

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Instructions for printing this document: Pages 1–36 and the Rulemaking Checklist should be printed and/or copied as full duplex, on both sides of the paper, to be assembled as a book with the wide margins facing the binder side. The remaining pages may be printed and copied on one side only.

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Introduction

➤ The Purpose of Rulemaking

Because of the increasingly complex nature of our society, the Legislature cannot be expected to anticipate and address every issue that may arise in a particular area. It may therefore properly delegate to an executive agency¹ part of its legislative authority to implement the policy it announces.² Although such policy may, as a general rule, be broadly defined, rulemaking authority must be delegated by a specific statute.³ An agency has no inherent authority to adopt regulations.

Regulations implement legislative policy and therefore must be consistent with that policy.

The Legislature may delegate rulemaking authority in general terms, such as where it provides that the agency “may . . . [a]dopt such regulations as are reasonable and necessary for the administration of this chapter.” NRS 645C.210(2)(a). The use of the word “may” in the statutory grant of authority usually indicates that the rulemaking authority is discretionary. Discretionary rules are those which an agency may adopt, although it is not required to do so. Mandatory rules are those which the agency is required by statute to adopt.⁴ The Legislature usually uses the word “shall” in defining such mandatory rules. Whether mandatory or discretionary, administrative regulations cannot contradict or conflict with the statute they are intended to implement.⁵ Furthermore, an agency must have specific authority authorizing it to charge or collect a fee before a regulation imposing any such fee may be enacted.

¹ NRS 233B.031 defines “Agency” as “an agency, bureau, board, commission, department, division, officer or employee of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases.”

² See *Mistretta v. United States*, 488 U.S. 361 (1989).

³ *Clark Co. v. State, Equal Rights Comm’n*, 107 Nev. 489, 813 P.2d 1006 (1991).

⁴ The Commission of Appraisers of Real Estate, for example, is required to adopt regulations “[e]stablishing standards of professional conduct.” NRS 645C.210(1)(d)(3).

⁵ *Roberts v. State of Nevada*, 104 Nev. 33, 752 P.2d 221 (1988).

Administrative regulations must be:

- ▶ within the statutory rulemaking authority of the agency, consistent with the legislative policy in delegating that authority, and not arbitrary or capricious;
- ▶ consistent with rights guaranteed by the Nevada and United States Constitutions;
- ▶ adopted in compliance with statutory rulemaking procedures.⁶

This Manual is intended to assist those charged with adopting regulations by briefly describing the purpose and limitations of administrative rulemaking and the statutory requirements for adopting them. Since there may be requirements applicable to specific agencies, the agency should consult its attorney whenever it adopts regulations.

An Overview

➤ Definition of Regulation

A regulation is defined by NRS 233B.038(1)(a) as “[a]n agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency.” It also means “[a] proposed regulation, [t]he amendment or repeal of a prior regulation, and [t]he general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.” NRS 233B.038(1)(b)–(d).

⁶ Statutory rulemaking procedures are found in NRS Chapter 233B.

The term regulation does not include:

1. A statement concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
2. A declaratory ruling;
3. An intra-agency memorandum;
4. A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation;
5. An agency decision or finding in a contested case;
6. An advisory opinion issued by an agency that is not of general applicability;
7. A published opinion of the Attorney General;
8. An interpretation of an agency that has statutory authority to issue interpretations;
9. Letters of approval, concurrence, or disapproval issued in relation to a permit for a specific project or activity;
10. A contract or agreement into which an agency has entered;
11. The provisions of a federal law, regulation, or guideline;
12. An emergency action taken by an agency that is necessary to protect public health and safety⁷;
13. The application by an agency of a policy, interpretation, process or procedure to a person who has sufficient prior actual notice of the policy, interpretation, process, or procedure to determine whether the person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty, or monetary interest;
14. A regulation concerning the use of public roads or facilities which is indicated to the public by means of signs, signals, and other traffic-control devices that conform with the manual and specifications for a uniform system of official traffic-control devices adopted pursuant to NRS 484A.430; or
15. The classification of wildlife or the designation of seasons for hunting, fishing, or trapping by regulation of the Board of

⁷ Pursuant to NRS 233B.0658, an agency that takes such an emergency action must file with the Legislative Counsel within 5 working days after taking the action a statement that describes the action taken and the reason for the action. If federal law, regulation, interpretation, or instruction prohibits the agency from describing the action taken or the reason for the action, the statement must cite the federal law, regulation, interpretation, or instruction that prohibits such disclosure. The Legislative Counsel must include the statement in the Register of Administrative Regulations published pursuant to NRS 233B.0653.

Wildlife Commissioners pursuant to the provisions of Title 45 of NRS.

A regulation has the force and effect of law.

NRS 233B.038(2). “A properly adopted substantive rule establishes a standard of conduct which has the force of law.” *State ex rel. Tax Comm’n v. Safeway*, 99 Nev. 626, 630, 668 P.2d 291, 294 (1983).

➤ **Scope of the Administrative Procedure Act**

The procedures described in this Manual govern rulemaking by agencies subject to the rulemaking provisions of the Administrative Procedure Act, NRS chapter 233B. Pursuant to NRS 233B.039, certain agencies are entirely exempt from the contested case and rulemaking provisions of NRS chapter 233B. They are:

1. The Governor;
2. The Department of Corrections, except as otherwise provided in NRS 209.221;
3. The Nevada System of Higher Education;
4. The Office of the Military;
5. The State Gaming Control Board;
6. The Nevada Gaming Commission, except as otherwise provided in NRS 368A.140;
7. The Division of Welfare and Supportive Services of the Department of Health and Human Services
8. The Division of Health Care Financing and Policy of the Department of Health and Human Services, except as otherwise provided in NRS 422.390;
9. The State Board of Examiners acting pursuant to NRS chapter 217;
10. The Office of the State Engineer, except as otherwise provided in NRS 533.365;
11. The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375;
12. The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to NRS 616C.260(2);
13. The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830; and

14. The Silver State Health Insurance Exchange.

NRS 233B.039(1). The statute should be examined for additional exceptions and special situations.

➤ Rulemaking vs. Adjudication

NRS chapter 233B contains separate sections for “Administrative Regulations” and “Adjudication of Contested Cases.” It is important to understand the distinction between rulemaking and adjudication in order to determine whether a particular agency action requires the observance of rulemaking procedural formalities.

Adjudication is a determination of individual rights or duties. Legal institutions tend to make such decisions through an adversarial process, usually a trial, and hence lawyers tend to think of adjudication as synonymous with a trial.

* * * Rulemaking is a determination of general applicability, by nature prospective, although it may have some incidental retroactive effect. * * * It is usually said that rulemaking is like the activity of legislators.

Charles H. Koch, Jr., *Administrative Law and Practice*, §2.3, p. 57–58 (1985). It is in rulemaking that administrative agencies exercise their quasi-legislative authority, just as their function is quasi-judicial when deciding contested cases.

Since agency actions may be later invalidated if it is determined that the formalities of rulemaking should have been observed, the agency must carefully consider the nature of its actions regardless of their form. If the substance of the agency’s action is to define or establish a term or standard of conduct of general applicability, it may be deemed to have engaged in rulemaking even if the action takes place in the context of a proceeding more akin to adjudication.

In the case of *Coury v. Whittlesea-Bell*, 102 Nev. 302, 721 P.2d 375 (1986), the Public Service Commission was conducting a proceeding to determine whether an applicant should be granted a certificate of public convenience and necessity to operate a limousine

If the substance of an agency's action is to establish a term or standard of general applicability, the procedural formalities of rulemaking will be required, regardless of the form or context of the agency's action.

service. The Commission granted the application but limited its effect to the operation of “stretch” limousines of the type owned by the applicant, defining the term in a footnote of the decision. Because the district court found the term stretch limousine to be one of general applicability to effectuate commission policy, it reversed the Commission’s decision on appeal, holding that the Commission engaged in ad hoc rulemaking without observing the procedural rulemaking requirements of NRS chapter 233B. *See also, Las Vegas Transit v. Las Vegas Strip Trolley*, 105 Nev. 575, 780 P.2d 1145 (1989). The formalities of rulemaking are not required, however, when an agency merely attempts to enforce or implement the requirements of an existing statute. *K-Mart Corporation v. SIIS*, 101 Nev. 12, 693 P.2d 562 (1985).

➤ **Benefits of Rulemaking—Public Participation**

The decision to engage in rulemaking may come about in one of three ways:

- ▶ The Legislature may mandate that an agency adopt regulations addressing a particular subject;
- ▶ The agency may exercise its discretion to adopt a regulation within the permissible scope of its statutory authority; or
- ▶ A member of the public may petition the agency to adopt, amend or repeal a regulation. *See* NRS 233B.100.

Even where a particular regulation has not been initiated by a member of the public, participation in the rulemaking process by interested members of the public is a central theme of the procedural requirements of the Administrative Procedure Act. *See* NRS 233B.061.

Rulemaking may be used as a tool for fostering better understanding of legal requirements between an agency and those subject to the law administered by the agency. By the adoption of interpretive rules, agencies may attempt to remove uncertainty or ambiguity in the law. In some cases, regulations may be used to cure constitutionally defective statutes. *See Universal Electric v. Labor Comm’r*, 109 Nev. 127, 847 P.2d 1372 (1993). Rulemaking

proceedings offer an opportunity for the regulators and regulated to cooperate on issues of mutual concern. Although subject to some degree of formality, it is generally less difficult to amend a regulation than it is to amend a statute.

➤ Rules of Practice

Pursuant to NRS 233B.050(1)(a), every agency must adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency. The agency must review its rules of practice at least once every three years and file with the Secretary of State a statement setting forth the date on which the review was completed and describing any revisions made to the rules as a result of the review. NRS 233B.050(1)(d). Rules of practice must be available for public inspection. NRS 233B.050(1)(b).

A form used by the agency need not be adopted by regulation or described explicitly in the regulation. Including a general description of the form in the regulation, such as “on a form provided by the agency” is sufficient. If adopted in this manner, the form may then be changed by the agency without complying with the rulemaking requirements of NRS chapter 233B. If an agency elects to adopt a form as part of a regulation, it must be amended by regulation but may not be included as part of the Nevada Administrative Code. NRS 233B.062(1)(b).

➤ Declaratory Rulings and Petitions for Rulemaking

Every agency is required to adopt regulations which provide for the filing and disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation, or decision of the agency. NRS 233B.120. In addition, every agency must provide by regulation for the form and procedure for submission by which interested persons may request the adoption, amendment, or repeal of regulations. NRS 233B.100(1). Upon submission of such a petition, the agency has 30 days within which to deny the petition or initiate rulemaking proceedings. *Id.*

Administrative procedures for declaratory rulings should facilitate, not complicate, the process of obtaining such relief as such rulings have the beneficial effect of preventing confusion and misunderstanding regarding an agency's position in a particular matter. The procedures may be as simple as writing a letter to the head of the agency or as formal as conducting an evidentiary hearing followed by the filing of briefs by the parties, depending on the circumstances or wishes of the parties. For an example of rules of this type, *see* Nevada Administrative Code (NAC) 232.020 to 232.056, inclusive.

Rulemaking Procedure

➤ Summary



In general, the following steps must be completed when adopting regulations:

- ▶ Discuss the content or purpose of the proposed regulation with the board, commission, or agency head with rulemaking authority.⁸ Draft the language.
- ▶ In the case of a permanent regulation, send a draft of the rule to the Legislative Counsel and the State Library and Archives Administrator. Keep a copy available for public inspection.
- ▶ Consider the impact of the regulation on small businesses and, if necessary, consult with small business owners and prepare a small business impact statement. Draft a statement explaining the method used to determine the impact on small business.
- ▶ Conduct at least one workshop with interested persons to discuss the general topics addressed in the regulation. This workshop must be conducted according to the requirements of the Open Meeting Law.

⁸ In the case of boards or commissions, the proposed regulation should be discussed at a public meeting conducted in compliance with the Open Meeting Law.

- ▶ Set a hearing for public comment, draft a notice of the hearing, and post it. With respect to proposed permanent regulations, such notice must not be provided until the agency has received the approved or revised text of the proposed regulation from the Legislative Counsel.
- ▶ Conduct the public hearing according to the Open Meeting Law.
- ▶ Evaluate and consider written and oral public comment on the proposed regulation and, in the case of permanent regulations, any revisions of form and style made by the Legislative Counsel. Discuss the comments made with the board, commission, or agency head, if necessary. Amend the draft regulation to reflect any changes resulting from public comment.⁹
- ▶ Draft an informational statement describing the regulation and rulemaking proceeding. Prepare the Form for Filing of Administrative Regulations, a copy of which is included in Appendix E of this Manual. File the form and informational statement together with the final regulation with the Legislative Counsel.
- ▶ In the case of permanent regulations, after approval by the Legislative Commission or Subcommittee to Review Regulations, the Legislative Counsel will file the regulation with the Secretary of State. File a copy of the regulation bearing the seal of the Secretary of State with the State Library and Archives Administrator.
- ▶ In the case of a temporary regulation, file a copy of the regulation as adopted and the informational statement with the Secretary of State, the Legislative Counsel, and the State Library and Archives Administrator.
- ▶ In the case of an emergency regulation, after endorsement by the Governor, file a copy of the regulation with the Secretary of State and the Legislative Counsel.

⁹ If any substantive changes were made to the rule after its initial revision by the Legislative Counsel, submit the changes to the Legislative Counsel for further review. *See* NRS 233B.063(2).

➤ Types of Regulations

The three types of regulations are:

1. Permanent;
2. Temporary; and
3. Emergency.

There are three types of regulations, each with different procedural requirements. Permanent regulations are adopted using all the procedural formalities required by NRS chapter 233B. Temporary regulations are adopted in lieu of permanent regulations during the period immediately before and during legislative sessions when the staff of the Legal Division of the Legislative Counsel Bureau is busy drafting legislation. Emergency regulations may, under emergency circumstances, be drafted without holding public hearings or observing other procedural formalities. Only permanent regulations become part of the Nevada Administrative Code.

Temporary Regulations

Except for the requirement that the Legislative Counsel review the proposed regulation before its adoption, a temporary regulation must be adopted in accordance with the same requirements applicable to the adoption of permanent regulations.

If the agency wishes to adopt a regulation, or amend or suspend¹⁰ a permanent regulation between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, it must adopt a temporary regulation. A regulation proposed during this time period may be adopted without first submitting it to the Legislative Counsel for review pursuant to NRS 233B.063(3) and 233B.064.¹¹ Such a regulation expires by limitation on November 1st of the odd-numbered year. NRS 233B.063(3). The term also includes any other regulation which is effective for 120 days or less and is not an emergency regulation. NRS 233B.0385.

If the agency wishes to continue the temporary regulation as a permanent one, it should anticipate its expiration date and submit a permanent regulation to the Legislative Counsel in time enough to permit its review.¹² With the exception that they may be adopted before review by the Legislative Counsel, the procedural requirements for adoption of a temporary regulation are the same as those required for a

¹⁰ The term “suspend” is used instead of “repeal” because a temporary regulation automatically expires unless a permanent regulation is subsequently adopted.

¹¹ At the request of a Legislator, the Legislative Commission or Subcommittee to Review Regulations may examine a temporary regulation that is not yet effective pursuant to NRS 233B.070(2) to determine whether it conforms to statutory authority and legislative intent. NRS 233B.0633.

¹² The Legislative Counsel Bureau is required to complete its review of the proposed regulation within 30 days after it is submitted to it. NRS 233B.063(2). To allow for unanticipated delays, submit the rule for review at least 60 days before the expiration date of the temporary regulation.

permanent regulation. With one exception,¹³ an agency adopting a permanent regulation to coincide with the expiration of a temporary regulation must provide a second 30-day notice and public hearing. NRS 233B.060(2). It must also conduct a second workshop and public hearing.

Except with respect to a temporary regulation that has been reviewed early by the Legislative Commission or Subcommittee to Review Regulations, an agency may not file a temporary regulation with the Secretary of State until 35 days after the date on which the temporary regulation was adopted. NRS 233B.070(2). A temporary regulation becomes effective when the final version and a copy of the informational statement required by NRS 233B.066 is filed with the Secretary of State. *Id.* A copy of the final version and informational statement must also be filed with the Legislative Counsel. *Id.* Immediately after filing the temporary regulation with the Secretary of State, an agency must deliver a copy of the final version that bears the Secretary of State's stamp to the State Library and Archives Administrator for the public's use, as well as any material incorporated by reference that has not been filed previously. NRS 233B.070(6).

Emergency Regulations—NRS 233B.0613

Emergency regulations may be adopted quickly with few procedural requirements, but are effective only 120 days.

Emergency regulations may be adopted and become effective immediately upon their filing with the Secretary of State. They are effective for a period of not longer than 120 days. An emergency regulation may be adopted only under the following circumstances:

1. The agency must submit to the Governor a written statement of the emergency and the reasons for that determination;¹⁴
2. The Governor must endorse the statement of the emergency at the end of the full text of the statement on the original copy of the proposed regulation; and

¹³ The Public Utilities Commission of Nevada may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the Legislative Counsel and approved by the Legislative Commission or the Subcommittee to Review Regulations. NRS 233B.060(3).

¹⁴ Although the term “emergency” is not defined in NRS chapter 233B, the Legislature has defined the term in Nevada’s Open Meeting Law, NRS chapter 241, for purposes of waiving the 3-day notice requirement for meetings of public bodies as “an unforeseen circumstance which requires immediate action and includes, but is not limited to . . . [d]isasters caused by fire, flood, earthquake or other natural causes or . . . [a]ny impairment of the health and safety of the public.” NRS 241.020(8).

3. A copy of the regulation which includes the statement of emergency endorsed by the Governor, together with the informational statement required by NRS 233B.066¹⁵ and the Form for Filing Administrative Regulations, must be filed with the Secretary of State and the Legislative Counsel. The statement of emergency must be included in the emergency regulation for all purposes.

Before filing the emergency regulation with the Office of the Secretary of State, if feasible, the agency shall, not later than 9 a.m. on the first working day before the date on which the emergency regulation will be filed in the Office of the Secretary of State, make the emergency regulation available to the public by (a) providing a copy of the emergency regulation to a member of the public upon request and (b) posting a copy of the emergency regulation on the agency's website, if any. NRS 233B.0613.

Before conducting a hearing to consider the emergency regulation, if possible, the agency shall, not later than 9 a.m. on the first working day prior to the hearing, make the version of the proposed emergency regulation that will be considered at the hearing available to the public by (a) providing a copy of the emergency regulation to a member of the public upon request and (b) posting a copy of the emergency regulation on the agency's website, if any. NRS 233B.0613.

A regulation may be adopted by this emergency procedure only once. If an agency adopts a temporary or permanent regulation which becomes effective and is substantively identical to its effective emergency regulation, the emergency regulation expires automatically on the effective date of the temporary or permanent regulation. NRS 233B.0613.

Permanent Regulations

A permanent regulation is "a regulation which is not an emergency regulation or a temporary regulation." NRS 233B.036. Emergency and temporary regulations are exceptions to the general

¹⁵ The informational statement submitted with an emergency regulation need not include items relating to the conduct of a public hearing. NRS 233B.066(2).

rules governing the adoption of permanent regulations. Since most emergency and temporary regulations become permanent regulations, anyone involved in the rulemaking process should be familiar with these rules.

➤ The Drafting Process

Step One:

*Draft the
Regulation.*

Every regulation adopted by an agency must include a citation of the authority pursuant to which it, or any part of it, was adopted, the address of the agency, and an explanation of any procedures for obtaining clarification of the regulation or relief from the strict application of its terms, if the agency is authorized by specific statute to grant such relief. NRS 233B.040(2).

The basic criteria for the mechanics of form and style for administrative regulations are those set forth in NRS 233B.062: accessibility, clarity, and conciseness. Beyond this, since the Legislature has prescribed a single administrative code, it seems appropriate to attempt reasonable harmony of style within it. Thus, while there may well be two or more ways of expressing a particular thought which are equally clear and concise, one should be chosen and followed throughout the code. In making these choices, the NRS form is usually followed, not only because its style has been carefully considered over many years but also because there is an advantage to the user inherent in consistency between the regulations and the statutes.

Every permanent regulation must be submitted to the Legislative Counsel who shall examine and, if appropriate, revise the language submitted so that it meets these criteria. NRS 233B.063(1).¹⁶ Those charged with the responsibility of initially drafting the language for the proposed regulation should, however, follow these general guidelines.

¹⁶ “[E]ach agency which submits a regulation for examination and revision . . . shall reimburse the Legislative Counsel Bureau for the cost of the examination and revision.” NRS 233B.0635. This reimbursement is established by the Legislative Commission and “must be an hourly fee for each hour spent by employees of the Legal Division of the Legislative Counsel Bureau in examining and revising the regulation . . . [and] established at a rate calculated to generate the amount approved in the budget of the Legislative Counsel Bureau for such reimbursement.” *Id.* This reimbursement is not charged to agencies whose budgets are supported entirely from the State General Fund. *Id.*

Sections

1. All regulations are divided into sections numbered consecutively from 1. For the first section, “Section 1.” is written out. The abbreviation “Sec.” is used for succeeding sections.
2. Because lengthy sections are typically unwieldy for readers, sections should be short and address specific topics. Several sections can be related by including internal references or by subheads outside the body of the sections.
3. The internal arrangement of a section is the same as used in NRS.
 1. Subsection
 - (a) Paragraph.
 - (1) Subparagraph.
 - (I) Sub-Subparagraph. (Designated by Roman numerals)
4. Do not assign numbers for codification to new sections or renumber sections already codified in the Nevada Administrative Code. The Legislative Counsel assigns the section numbers when the regulation is incorporated into the Nevada Administrative Code. It is appropriate, however, to make suggestions regarding placement of sections.
5. A new section to be added to a chapter in the Nevada Administrative Code should have the following prefatory language:

Chapter ____ of NAC is hereby amended by adding thereto a new section to read as follows:

If two or three new sections are added:

Chapter ____ of NAC is hereby amended by adding thereto the provisions set forth as sections ____ and ____ of this regulation.

Chapter ____ of NAC is hereby amended by adding thereto the provisions set forth as sections ____, ____ and ____ of this regulation.

If four or more new sections are added:

Chapter ____ of NAC is hereby amended by adding thereto the provisions set forth as sections ____ to ____, inclusive, of this regulation.

The language of a new section being added to the Nevada Administrative Code should be italicized. Do not italicize the number of the section. Example:

Sec. 3. *A contractor may . . .*

6. If a section in the Nevada Administrative Code is being amended, the prefatory language is:

NAC ____ is hereby amended to read as follows:

7. If a section is being repealed, the prefatory language is:

NAC ____ is hereby repealed.

If more than one section is repealed, all the repealed sections should be listed in numerical order in one section. Always make sure, particularly in a large regulation, that you do not repeal a section you are also amending in the same regulation.

8. To amend a section from the Nevada Administrative Code, material to be deleted should be placed in brackets and new material italicized. New material should follow a set of brackets. For example:

The board's [standards] *procedural regulations* shall control the conduct of [disciplinary hearings] *all formal proceedings*.

Generally, punctuation should be added after the closing bracket. The exceptions are that an added period should precede the brackets and that when punctuation alone is being added, such a change should also be placed before the brackets. Examples:

. . . Fine [or] , revocation *or probation*.

. . . issuance of a license. [or renewal.]

For clarity, if there are only one or two words between two sets of brackets, all the language should be included in one set of brackets. The following example is what *not* to do:

[Such] *These* contracts [shall] *must* include [provision] *provisions* for *the*

Instead, do the following:

[Such contracts shall include provision for] *These contracts must include provisions for*

Definitions

1. A definition should be used only for a word which is used in a sense different from its natural meaning or whose meaning is extended or limited for the purposes of the regulation or chapter in which it occurs. Do not define a word which does not occur in the regulation or chapter.
2. A definition must only define the word or term and must not contain any substantive provisions.
3. If a word is defined in NRS, it should be used in the same sense in any related regulations. NRS 0.024 provides that, with certain exceptions, “if a word or term is defined for use in a particular title or chapter of the Nevada Revised Statutes or in a particular subpart thereof, the word or term has the same meaning in the corresponding title or chapter of the Nevada Administrative Code or in the corresponding subpart thereof, as applicable.” Therefore, it is unnecessary to duplicate definitions in NRS in the corresponding chapter of NAC. However, if an agency wishes to do so, the definition should state that it has the same meaning ascribed to the relevant NRS definition instead of duplicating the actual language of the relevant NRS definition, which could be changed subsequently by the Legislature. An example of referencing a definition in NRS is: “Controlled substance” has the meaning ascribed to it in NRS 0.031.

Common Terms of Art

1. A command is expressed by “shall,” a prohibition by “shall not.” “No person shall” is not acceptable usage. Use “shall” when a duty to act is imposed. Remember that only persons and other legal entities can perform a duty. *See* NRS 0.025.

2. Use “must” to express a requirement when:
 - (a) The subject is a thing. For example: “The application must be accompanied by a fee of . . .”
 - (b) The subject is a natural person and the verb is in the passive voice. For example: “A licensee whose bond has expired must be . . .”
 - (c) The subject is a natural person and only a condition precedent and not a duty is imposed. For example: “A person who desires to be licensed must file an application . . .”

See NRS 0.025.

3. Permissive conduct is expressed by “may.” *See NRS 0.025.* The negative expression “No person may . . .” is appropriate.
4. A regulating authority cannot command itself. If the agency intends to promise that it will act in a certain way, the appropriate phrase is, for example, “The Board will . . .”
5. The following is a partial list of words and phrases that should be avoided:
 - “individual” as a noun, instead use “person”
 - “prior to,” instead use “before”
 - “such,” unless it means “of this kind” or is followed by “as” or “that”
 - “due to,” instead use “because of”
 - “duly”
 - “herein”
 - “professional” as a noun
 - “implement” as a verb, instead use “carry out”
 - “utilize,” instead use “use”
6. Use verbs in their simplest and most active form. For example: Instead of using “give consideration to” use “consider,” instead of using “have knowledge of” use “know,” and instead of using “make payment” use “pay.”
7. Do not use jargon. Words used in a regulation should be found in the dictionary. A common fault of contemporary speech and writing is the stringing together of nouns when all but the last are being used as adjectives, as in “health care delivery system.”

Use prepositions to avoid this (“System for delivery of health care”).

8. In 2009, the Legislative Counsel was required to make the Nevada Revised Statutes and the Nevada Administrative Code gender neutral. Thus, gender neutral language should be used such as “he or she” or “persons.” Non-gender specific terms are also appropriate such as “applicant” or “licensee” and may aid the drafter in achieving general neutral language in the regulation. *See* NRS 0.030.
9. Always use the singular number unless only the plural applies. *See* NRS 0.030.
10. Do not use redundant language. A provision of a regulation which repeats the provisions of a statute, verbatim or in substance, is not void, but it is redundant and will conflict with the statute if the statute is subsequently amended or repealed. Therefore, a regulation should contain no text covered by a statute.

Material Incorporated by Reference

NRS 233B.040 authorizes the adoption by reference of material published by another authority. A regulation which incorporates such material must state where a copy of the material may be obtained and how much it costs. The agency is required to file a copy of the material incorporated by reference with the Secretary of State and the State Library and Archives Administrator. In addition, a copy of the material should accompany the adopted regulation filed with the Legislative Counsel. The Legislative Counsel will file the regulation with the Secretary of State. When the agency files a copy of the adopted regulation with the State Library and Archives Administrator, a copy of the material incorporated by reference must accompany the regulation.

Typical Order of Sections in a Regulation

Chapters and sections should be amended in numerical order. New sections added to a chapter are placed before amended sections for that chapter. If definitions are added with other new sections, the definitions appear before the substantive provisions. The following is an outline of the typical order of sections in a regulation:

1. New sections for a particular chapter.
 - (a) Definitions.
 - (b) Substantive provisions.
2. Amended sections in that same chapter in numerical order.
3. If applicable, new sections for another chapter, in numerical order.
4. Amended sections for that chapter, in numerical order.
5. Repealed sections in numerical order.
6. Effective date. (This is rarely used in a regulation. Normally, the regulations become effective upon filing.)

➤ Legislative Review

Pre-Adoption Review

Step Two:

Submit the text of the proposed regulation to the Legislative Counsel.

The agency must deliver a copy of the proposed rule to the Legislative Counsel at the start of the rulemaking process.¹⁷ NRS 233B.060; NRS 233B.063. The Legislative Counsel, pursuant to NRS 233B.063, must review the regulation to determine if the language is clear, concise, and suitable for incorporation in the Nevada Administrative Code. While NRS 233B.063 prohibits the Legislative Counsel from altering the meaning or effect of the regulation without the consent of the adopting agency, this may occur inadvertently because some regulations are very technical and the person reviewing the regulation is not an expert in that field. If this occurs, the Legislative Counsel should be notified and the problem discussed and resolved.

¹⁷ If the regulation is submitted to the Legislative Counsel for review, either initially or as the result of substantive changes made to it after its initial review, between July 1 of an even-numbered year and July 1 of an odd-numbered year, it must be adopted as a temporary regulation. NRS 233B.063(2).

At the start of the agency's rulemaking process, a draft of the regulation must be sent to the Legislative Counsel for review.

If the regulation is changed substantively after this initial review and approval by the Legislative Counsel, for example, changes made due to public comment at the public hearing, it must be submitted to the Legislative Counsel again for review. NRS 233B.063(2). The Legislative Counsel must return the regulation with appropriate revisions within 30 days. *Id.* Agencies whose budgets are not supported entirely from the State General Fund will be required to pay the cost of review and revision. NRS 233B.0635.

Although a proposed permanent regulation is usually reviewed by the Legislative Commission or the Subcommittee to Review Regulations *after* the agency adopts it, the Legislative Commission may provide for an early review after the agency has given its notice of a hearing on the regulation but before the public hearing is held. It may also waive its review in the case of administrative convenience or necessity. NRS 233B.0681.

Post-Adoption Review

After a regulation has been adopted, the agency must submit a copy, together with the informational statement required by NRS 233B.066 and the Form for Filing Administrative Regulations, to the Legislative Counsel. If the agency submits an adopted regulation which it is required to adopt pursuant to a federal statute or regulation and the regulation exceeds the agency's specific statutory authority or sets forth requirements that are more stringent than a statute of this state, the agency must include a statement that adoption of the regulation is required by federal statute or regulation and include a citation to the federal statute or regulation involved. NRS 233B.067.

Pursuant to NRS 233B.067, the Legislative Commission must review the regulation for conformity with legislative authority and intent after it has been adopted and approve the regulation before it becomes effective.¹⁸ The Legislative Commission will either review the regulation at its next scheduled meeting¹⁹ or refer it to the

¹⁸ To avoid any difficulty after adoption, the Legislative Counsel has in practice conducted this examination during its review of the proposed regulation. If the Legislative Counsel believes there is a question whether the substance of a regulation conforms to legislative authority and intent, this question is discussed and resolved with the agency as soon as possible.

¹⁹ To be included on the next Legislative Commission meeting agenda, the agency must file the regulation at least 10 working days before the next scheduled meeting of the Commission. If the agency files the regulation less

Subcommittee to Review Regulations.²⁰ If an emergency requires the regulation to become effective before the Legislative Commission is able to review and approve it, the agency may inform the Legislative Counsel in writing and the regulation will be referred to the Subcommittee to Review Regulations for its review and approval as soon as practicable. NRS 233B.067(4).

Affirmative action by the Legislative Commission or the Subcommittee to Review Regulations is required to approve or object to a regulation. If no action is taken by the Commission or Subcommittee, the regulation does not become effective.

Legislative Objection to Regulations

Although in the majority of cases any questions regarding an agency's statutory authority to adopt a regulation are resolved informally with the Legislative Counsel before adoption of the regulation, the Legislative Commission or Subcommittee to Review Regulations may object to a permanent regulation after its adoption, in which case it does not become effective, if it determines that:

1. In the case of a regulation purportedly required by federal law, the regulation is not required by federal law;
2. The regulation does not conform to statutory authority; or
3. The regulation does not carry out legislative intent.

NRS 233B.067(5).²¹ If the Legislative Commission or Subcommittee to Review Regulations objects to a regulation on one of these grounds, the agency must revise the regulation and return it to the Legislative Counsel within 60 days after the agency receives written notice of the objection. The regulation does not become effective until the Commission or Subcommittee approves the regulation and the Legislative Counsel files the regulation with the Secretary of State and notifies the agency of the filing. NRS 233B.0675.

than 10 working days before the next scheduled meeting of the Commission, the regulation will be on the subsequent Legislative Commission meeting's agenda.

²⁰ The Subcommittee to Review Regulations is appointed by the Legislative Commission after each legislative session and consists of at least three members or alternate members of the Legislative Commission. NRS 233B.067(6).

²¹ Legislative objection to regulations is the result of voter approval of Ballot Question 5, an amendment to Section 1 of Article 3 of the Nevada Constitution approved by the voters in 1996.

For re-adoption of a revised regulation to which there has been an objection, a public body is only required to provide the notice of at least 3 working days required under the Open Meeting Law. *See* NRS 241.020.

➤ Impact On Small Businesses

Step 3:

Consider the impact of the proposed regulation on small businesses, prepare a statement describing the method used to determine the impact, and if necessary, prepare a small business impact statement.

Before conducting a workshop on a proposed regulation, the agency must determine whether the regulation is likely to “[i]mpose a direct and significant economic burden upon a small business” or “[d]irectly restrict the formation, operation or expansion of a small business.” NRS 233B.0608(1). A small business is defined as a business conducted for profit that employs fewer than 150 full-time or part-time employees. NRS 233B.0382. If the agency concludes that the proposed regulation is likely to have such an impact, it must (1) “Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation,” (2) “Consider methods to reduce the impact of the proposed regulation on small businesses,”²² and (3) “Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted and the public hearing held pursuant to NRS 233B.061.” NRS 233B.0608(2). For all regulations, “[t]he agency shall prepare a statement identifying the method used by the agency in determining the impact of a proposed regulation on a small business.” NRS 233B.0608(3).

If the agency determines that a small business impact statement is required, the statement must include the following information pursuant to NRS 233B.0609:

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their responses, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

²² To reduce the impact of the proposed regulation on small businesses an agency may (1) Simplify the proposed regulation, (2) Establish different standards of compliance for small businesses, and (3) Allow a small business to pay a lower fee or fine. NRS 233B.0608(2).

2. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:
 - (a) Both adverse and beneficial effects; and
 - (b) Both direct and indirect effects.
3. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods. *See* NRS 233B.0608(2)(b).
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect, and the manner in which the money will be used.
6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

A small business that is aggrieved by a regulation may object to all or a part of the regulation by filing a petition with the agency within 90 days after the date on which the regulation was adopted. Grounds for the petition may include: (1) the agency failed to prepare a required small business impact statement; or (2) the small business impact statement prepared by the agency did not consider or significantly underestimated the economic effect of the regulation on small businesses. If the agency determines that the petition has merit, it may take action to amend the regulation. NRS 233B.105.

➤ Workshops

Step 4:

Conduct at least one workshop to discuss the general topic or topics covered by the proposed regulation.

Before conducting public hearings on the proposed regulation, the agency must conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in the proposed regulation. NRS 233B.061(2). At least 15 days in

advance of the workshop,²³ the agency must provide written notice of the time and place set for the workshop to every person on the agency's mailing list for receipt of notice of proposed regulations and such additional notice as will inform the general public and any business that may be affected by the proposed regulation.²⁴ The notice must describe the general topics to be discussed at the workshop.

The statute specifies neither the form of the notice nor the procedure to be used in conducting the workshop. It seems clear, however, the workshop is intended to provide interested persons with a reasonable opportunity to meet informally with agency staff to discuss the general subject matter of the regulation proposed to be adopted. *See* NRS 233B.061(1).

An agency may conduct a workshop at the earliest stages of its consideration of a proposed regulation. The statute does not require the agency to have drafted language for the proposal at the time it conducts a workshop. It is therefore permissible for an agency to conduct a workshop to discuss the general subjects to be addressed in a regulation to be drafted in the future. *See* NRS 233B.061(2).

It is also permissible for an agency to conduct the workshop after it has drafted the language of a proposed regulation. To simplify the procedure in this situation, the agency may plan for the workshop at the same time it plans for the public hearing. That way, the agency may provide the formal notice of public hearing at the same time and in the same manner as the notice of workshop.²⁵ Notice of the workshop could consist of a letter or statement describing the purpose of the meeting and the general topics to be discussed. An example of such a notice is included in Appendix C.²⁶ The agency may not, however, hold the public hearing on the same day that it holds the workshop. NRS 233B.061(4).

²³ When calculating the 15-day notice, the day of the workshop is not counted. In addition, like other Open Meeting Law notices, the notice must be posted by 9 a.m. on the required day. For example, if an agency plans to hold its workshop on September 16th, the workshop notice must be posted by 9 a.m. on September 1st.

²⁴ For example, an agency proposing a regulation that will affect a regulated industry should probably provide some means of written notice to all persons in the industry licensed by the agency.

²⁵ Please note that, pursuant to NRS 233B.060(1), the agency may not notice its public hearing until after the agency receives an approved or revised draft of the proposed regulation from the Legislative Counsel. Therefore, if the agency chooses to notice its public hearing at the same time as its workshop, the agency must receive an approved or revised draft of the proposed regulation before providing the notice.

²⁶ Please note that the sample notice in Appendix C may not meet all requirements of the Open Meeting Law, found in NRS Chapter 241. Please be sure to modify this notice to comply with NRS Chapter 241 or prepared a separate agenda. *See* NRS 233B.061(5). *See also* Nevada Open Meeting Law Manual, published by the Nevada Attorney General's Office online at <http://ag.state.nv.us>.

All workshops must be conducted in accordance with Nevada's Open Meeting Law, NRS Chapter 241. NRS 233B.061(5). This means, at a minimum, there must be an agenda, the workshop must be recorded, and minutes must be kept. *See* NRS Chapter 241. *See also* Nevada Open Meeting Law Manual, published by the Nevada Attorney General's Office online at <http://ag.state.nv.us>.

The written minutes of the agency's workshop should include the date, time, and place of the workshop, those members of the agency and public who were present, the substance of the discussion at the workshop, including the name of each speaker, any written comment submitted to the agency, and any other information which is requested to become part of the record. NRS 241.035. The agency should also include in its informational statement a section describing each workshop conducted.

The minutes of the workshop are a public record and must be available for public inspection. *See* NRS 241.035(2). The minutes or audiotape recording of the workshop must be available for public inspection within 30 working days after adjournment of the workshop. *Id.* The minutes should be included in the agency's file for the regulation and must be retained for at least 5 years. *Id.* The agency may impose a reasonable fee to cover the cost of providing copies of the minutes to a party requesting them. *See* NRS 239.052.

The audiotape or written transcript of the workshop must be retained for at least 1 year after the meeting and, like the minutes, is a public record that must be available for inspection by the public. *See* NRS 241.035(4).

➤ Notice of Intent to Adopt Regulations

Step 5: Prepare and post the notice of intent to act upon regulations.

Except in the case of emergency regulations, before adopting, amending, or repealing any permanent or temporary regulation, and before adopting a temporary regulation as a permanent regulation, the agency must give at least 30 days' notice²⁷ of its intended action unless

²⁷ When calculating the 30-day notice, the day of the workshop is not counted. In addition, like other Open Meeting Law notices, the notice must be posted by 9 a.m. on the required day. For example, if an agency plans to hold its workshop on September 30th, the workshop notice must be posted by 9 a.m. on August 31st.

a shorter period of time is specifically permitted by statute. With respect to permanent regulations, notice may not be given until after the agency receives the approved or revised text of the proposed regulation from the Legislative Counsel. NRS 233B.060(1).

The notice of intent to act upon a regulation must include the following pursuant to NRS 233B.0603:

1. A statement of the need for and purpose of the proposed regulation;
2. If the regulation is a temporary one, either the text of the proposed rule or a description of the substance of the rule and the subjects and issues involved. If the regulation is a permanent one, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063;
3. A statement of the estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include both adverse and beneficial effects and both immediate and long-term effects;
4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608;
5. The estimated cost to the agency for enforcement of the proposed regulation;
6. A description of any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary, if the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency;
7. If the regulation is required pursuant to federal law, a citation and description of the federal law;
8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of those provisions;

9. The date, time, and place where, and the manner in which, interested persons may present their views on the proposed regulation;
10. All addresses where the text of the rule may be inspected and copied;
11. The exact language of subsection 2 of NRS 233B.064,²⁸ and
12. A statement indicating whether the regulation establishes any new fee or increases an existing fee.

Pursuant to NRS 233B.0603(2), the Attorney General has adopted a regulation, NAC 233B.010, that specifies the form of notice to be used in rulemaking. A copy of this form is included in Appendix B of this Manual and should be used in all cases to provide the required notice of rulemaking. Because this form does not satisfy the Open Meeting Law requirements for an agenda, a separate agenda for the public hearing must also be prepared. *See* NRS 233B.061(5). *See also* Nevada Open Meeting Law Manual, published by the Nevada Attorney General's Office online at <http://ag.state.nv.us>.

At the time of giving the notice, the agency must deposit one copy of the notice and text of the proposed regulation with the State Library and Archives Administrator and keep at least one copy in each of its offices from the date of the notice to the date of the hearing for inspection and copying by the public. The agency must also deposit one copy of the notice and text of the proposed regulation with the librarian of the main public library in any county where the agency does not maintain an office. NRS 233B.0607(1). The text of the proposed regulation must include the entire text of any section of the Nevada Administrative Code which is proposed for amendment or repeal. NRS 233B.0607(2). A copy of the notice must also be provided to the Legislative Counsel Bureau for inclusion in the Register of Administrative Regulations. NRS 233B.0603(1)(f).

Agencies have an affirmative duty to solicit comment on their proposed regulations. NRS 233B.0603(3) requires the agency to "solicit comment generally from the public and from businesses to be

²⁸ NRS 233B.064(2) provides: "Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption."

affected by the proposed regulation.” In addition, agencies must maintain mailing lists of persons who have requested in writing that they be informed of proposed regulations and mail the notice of intent to act upon the regulation to all persons on the list. NRS 233B.0603(1)(e). As a general rule, the more notice provided, the better. At a minimum, the notice should be posted at all of the agency’s office locations and provided to public libraries as required by NRS 233B.0607(1). Notices may also be posted at other public or private places, such as courthouses, the offices of businesses or professional associations, and other groups that will be affected by the regulation.

➤ The Public Hearing

Step 6:

Receive oral comments about the proposed regulation at a public hearing.

At the time and place set for hearing on the proposed regulation, the agency must afford “[a]ll interested parties . . . a reasonable opportunity to submit data, views or arguments upon a proposed regulation.” NRS 233B.061(1). “[T]he agency shall set a time and place for an oral public hearing.” NRS 233B.061(3). Alternatively, parties may submit their views in writing. *Id.* Both oral and written submissions regarding the proposed regulation must be considered fully. *Id.*

The agency must set a deadline in the notice of hearing for the submission of written comments. In the case of regulations expected to be adopted on the same day as the public hearing, that deadline should be set a reasonable time before the hearing to permit those acting on the proposed regulations to consider the comments prior to adoption. If the regulation will not be adopted at a public hearing, such as the case where a single agency administrator is authorized to adopt the regulation, there is no reason to impose an early deadline on the submission of written comments. The agency may extend the time for receipt of written comments, as necessary. The person conducting the hearing could, for example, permit the submission of written testimony at the hearing itself or within a timeframe set by the agency beyond the date of the hearing. This would be especially appropriate if the agency does not intend to consider all public comments and act on the regulation on the same day as that scheduled for receipt of oral comments.

If the agency adopting the regulation is a board or commission, the public hearing to receive public comments may be scheduled immediately before the open meeting of the board or commission to consider those comments and act upon the regulation. The public hearing should be conducted by the board or commission, not staff.

Record of the Public Hearing

All public hearings must be conducted in accordance with Nevada's Open Meeting Law, NRS Chapter 241. NRS 233B.061(5). This means, at a minimum, there must be an agenda, the hearing must be recorded, and minutes must be kept.

The minutes of the hearing are a public record and must be available for public inspection. The minutes or audiotape recording of the hearing must be made available for public inspection within 30 working days after adjournment of the hearing. The minutes should be included in the agency's file for the regulation and must be retained for at least 5 years. NRS 241.035(2). The agency may impose a reasonable fee to cover the cost of providing copies of the minutes to a party requesting them. *See* NRS 239.052.

The audiotape or written transcript must be retained for at least one year after the meeting and, like the minutes, is a public record that must be available for inspection by the public. *See* NRS 241.035(4).

The minutes of the public hearing must include:

1. The date, time and place of the hearing.
2. Those members of the public body who were present and those who were absent. In the case of an agency headed by a single person, the names of the agency staff members present.
3. In the case of a public body, the substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.
4. The substance of remarks made by any member of the general public who addresses the public body or agency if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.
5. Any other information which any member of the public body, or the agency head or his or her designee, requests to be included or reflected in the minutes.
See NRS 241.035(1).

Conduct of the Public Hearing

The agency conducting the hearing to receive public comments on a proposed regulation should consider the following guidelines:

1. Identify yourself and the agency proposing the regulation;
2. Explain the substance of the regulation and the subjects and issues involved. Make extra copies of the proposed regulation available for inspection;
3. Explain the procedure by which attendees may inspect the record relating to the rulemaking proceeding or obtain a copy of the regulation as finally adopted;
4. Explain that the purpose of the hearing is to receive comments on the proposed regulation;
5. Inform attendees of any extensions granted and the deadline for submission of additional written comments;
6. Request that all attendees sign-in on a written sign-in sheet, including their name and affiliation, if any; and
7. Request that all persons desiring to speak provide their name and affiliation when speaking.

➤ Consideration of Public Comments

Step 7:

Consider the comments received from the public and businesses affected by the proposed regulation.

The person or body with the authority to adopt the regulation must “consider fully” all oral and written comments received. NRS 233B.061(3). In some cases, it may be possible to conduct the hearing on the regulation contemporaneously with the public meeting of the board or commission called to consider and take action on the regulation. Since the members of the board or commission will have been present for the taking of public comments and may review any written comments previously submitted, this would appear to be an efficient means of complying with this requirement. Provided the meeting of the board or commission has been noticed in accordance with the Open Meeting Law, the board or commission may act

immediately on any suggested changes to the rule offered by a member of the public, the industry affected, or a member of the board or commission although any substantive changes made to the regulation in this manner must be submitted to the Legislative Counsel prior to adoption pursuant to NRS 233B.063(2).

Written comments may simply be provided to the board to review at or before a public meeting called for the purpose of discussing the public comment and considering adoption of the rule. The board may be provided with a copy of the minutes, audio recording or written transcript of the hearing held to receive oral comments. Alternatively, the board may be provided with a report, in oral or written form, of the substance of the comments received at the hearing.

Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change. Persons with rulemaking authority who are not subject to the Open Meeting Law may consider the public comment in private. Such persons shall include a discussion of the public comments received, whether or not the regulation was changed based on public comment, and reasons for changing or deciding not to change the regulation in the agency's informational statement concerning the regulation. NRS 233B.066.

➤ Final Adoption

Step 8:

Adopt the regulation and file the original with the Legislative Counsel. Upon its filing with the Secretary of State by the Legislative Counsel, file a conformed copy with the State Library and Archives Administrator.

The final step in the rulemaking process is the adoption of the regulation. At this point the regulation will have been reviewed and revised, if necessary, by the Legislative Counsel and perhaps changed as the result of public comment. The original, final copy of the regulation must now be filed with the Legislative Counsel together with the informational statement required by NRS 233B.066, the form for filing administrative regulations, and the form *Notice of Adoption of Regulation*, a copy of which is attached as Appendix F. After adoption by the agency or public body, the regulation must be reviewed and approved by the Legislative Commission or Subcommittee to Review Regulations.

Informational Statement

Pursuant to NRS 233B.066, the informational statement must contain the following:

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary;
2. A statement indicating the number of persons who attended each meeting or workshop, testified at each hearing, and submitted written statements regarding the proposed regulation. This statement should include for each person identified pursuant to this section who testified at each hearing and/or submitted written statements regarding the proposed regulation, the following information, if provided to the agency conducting the hearing or workshop:
 - (a) Name;
 - (b) Telephone number;
 - (c) Business address;
 - (d) Business telephone number;
 - (e) Electronic mail address; and
 - (f) Name of entity or organization represented;
3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary;
4. If, after consideration of public comment, the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change;
5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:
 - (a) Both adverse and beneficial effects; and
 - (b) Both immediate and long-term effects;
6. The estimated cost to the agency for enforcement of the proposed regulation;

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency;
8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions; and
9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The agency's small business impact statement also may be included with the agency's informational statement. *See* NRS 233B.0608. A sample informational statement, which also includes the agency's small business impact statement in number 10, is included in Appendix G of this Manual.

The informational statement is essential. If it is not included with the final regulation, the Legislative Counsel will return the regulation to the agency with a note that the statement is missing. Unless the statement is supplied, the Legislative Counsel will not submit the regulation to the Legislative Commission or the Subcommittee to Review Regulations, as applicable, and the regulation will not become effective. NRS 233B.0665.

Effective Date

A regulation usually becomes effective upon filing with the Secretary of State.

If after submitting the regulation to the Legislative Commission for review, there is no question as to conformity of the regulation to legislative authority and intent,²⁹ the Legislative Counsel will promptly file the final, adopted regulation with the Secretary of State. A permanent regulation becomes effective when the Legislative Counsel files the final version that has been approved by the Legislative Commission or Subcommittee to Review Regulations with the Secretary of State unless a statute prescribes a specific time when the regulation becomes effective or a later date is specified in the regulation.

²⁹ *See* the section on Legislative Objection to Regulations, *supra* page 20.

Except with respect to a temporary regulation that has been reviewed early by the Legislative Commission or Subcommittee to Review Regulations, an agency may not file a temporary regulation with the Secretary of State until 35 days after the date on which the temporary regulation was adopted. A temporary regulation becomes effective when the final version together with the informational statement is filed by the agency with the Secretary of State. A copy of the final version of a temporary regulation together with the informational statement must also be filed by the agency with the Legislative Counsel.

Immediately after each permanent or temporary regulation is filed with the Secretary of State, the agency must deliver one copy of the final draft or revision bearing the stamp of the Secretary of State indicating that it has been filed, including material adopted by reference which is not already filed with the State Library and Archives Administrator, to the State Library and Archives Administrator for use by the public. NRS 233B.070(6).

If the agency is a licensing board as defined in NRS 439B.225 and it has adopted a permanent regulation relating to standards for the issuing or renewing of licenses, permits or certificates of registration issued to a person or facility regulated by the agency, the agency shall also deliver one copy of the regulation, bearing the stamp of the Secretary of State, to the Legislative Committee on Health Care within ten (10) days after the regulation is filed with the Secretary of State. NRS 233B.070(6).³⁰

➤ Maintenance of Regulations

Availability

Each agency must maintain a copy of its regulations and must furnish a copy of its regulations to any person who requests a copy. NRS 233B.050(1)(b). The agency may charge a reasonable fee for the copy based on the cost of reproduction. *See* NRS 239.052.

³⁰ Pursuant to NRS 439B.225, the Legislative Committee on Health Care is required to review “each regulation that a licensing board [as defined in NRS 439B.225(1)] **proposes or adopts** that relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the board” (Emphasis added). Depending on the timing of the meetings of the Legislative Committee on Health Care, as regulation may be reviewed by the Committee at the proposed or adopted stage.

If the agency publishes any regulations included in the Nevada Administrative Code, it must use the exact text of the regulation as it appears in the Code, including the lead lines and numbers of the sections. Any other material that an agency includes in a publication with its regulations must be presented in a form which clearly distinguishes that material from the regulations.

Periodic Review

NRS 233B.050(1)(d) requires every agency subject to its terms to review its rules of practice at least once every three years and file with the Secretary of State a statement setting forth the date on which the most recent review of those rules was completed and describing any revisions made as a result of the review.

Every agency must also review *all* its regulations at least once every ten years to determine whether it should amend or repeal any of the regulations. NRS 233B.050(1)(e). Within thirty days after completion of its review, the agency must submit a report to the Legislative Counsel for distribution to the next regular session of the Legislature. The report must include the date on which the agency completed its review and describe any regulations that must be amended or repealed as a result of the review. The Legislative Counsel will include the date of the last review in the Nevada Administrative Code. NRS 233B.065(2). A form for this review is included as Appendix H with this Manual.

Register of Administrative Regulations— NRS 233B.0653

The Legislative Counsel maintains a Register of Administrative Regulations containing the following information regarding each permanent regulation adopted by an agency:

1. The proposed and adopted text of the regulation and any revised version of the regulation;
2. The Notice of Intent to Act upon a proposed regulation required by NRS 233B.0603;

3. The written notice of adoption of the regulation required by NRS 233B.064;
4. The Informational Statement required by NRS 233B.066; and
5. The effective date of the regulation, as determined pursuant to NRS 233B.070.

The register is distributed to and maintained by:

1. The Secretary of State;
2. The Attorney General;
3. The Supreme Court Law Library;
4. The State Library and Archives;
5. Each county clerk;
6. Each county library; and
7. The Legislative Counsel Bureau.

The register is also published and available on the Internet at <http://www.leg.state.nv.us>. See NRS 233B.0656.

Appendix

- A - Rulemaking Checklist
- B - Notice of Intent to Adopt Regulations (NAC 233B.010)
- C - Sample Notice of Workshop
- D - List of Public Libraries
- E - Form for Filing Administrative Regulations
- F - Notice of Adoption of Regulation
- G - Sample Informational Statement
- H - Form for 10-Year Review of Regulations
- I - Revisor's Notes



Rulemaking Checklist

Note: This checklist is intended as a general guide and should not be relied on exclusively for requirements governing the adoption of administrative regulations. If in doubt, consult your attorney.

In Re: _____

Date: _____

Step 1: Draft the regulation

_____ **Purpose of regulation:** _____

_____ **Statutory Authority:** _____

_____ **Discussed with board, commission or other persons?**
 (Check compliance with Open Meeting Law.)

_____ **Comments:** _____

_____ **Draft of proposed regulation completed on:** _____

_____ **Type of Regulation:** _____ Permanent; _____ Temporary;
 _____ Emergency.

Step 2: Submit proposed regulation to Legislative Counsel (Permanent regulations only)

_____ **Date submitted:** _____
 (If regulation will be submitted to Legislative Counsel between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the regulation must be adopted as a temporary regulation and Step 2 should be skipped until adopting the temporary regulation as a permanent regulation. See Step 8.)

_____ **Deadline for consideration by Legislative Counsel: (30 days after submission - permanent regulations only.)** _____

_____ **Date returned by Legislative Counsel:** _____

_____ Regulation as revised by Legislative Counsel reviewed by
_____ on _____.

_____ Any issue regarding changes to substance of regulation by
Legislative Counsel or questions regarding agency's statutory
authority to adopt the regulation or legislative intent by Legislative
Commission?
Comments: _____

**Step 3: Consider impact on small businesses, prepare a
statement describing the method used to determine the
impact and, if necessary, consult with small businesses,
consider ways to reduce impact, and prepare small
business impact statement**

_____ Does the proposed regulation impose a direct and significant
economic burden upon a small business (fewer than 150 full-time or part-time
employees) or directly restrict the formation, operation, or expansion
of a small business?

What methods were used to determine the impact on small
businesses?

Statement identifying the methods used to determine the impact on
small businesses prepared on _____.

If the regulation will not impact small businesses, go to step 4, if it
will have an impact:

Efforts to consult with small businesses:

Consideration of methods to reduce impact on small businesses:

Small Business Impact Statement prepared on _____ and includes:

_____ A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

_____ The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:
(a) Both adverse and beneficial effects; and
(b) Both direct and indirect effects.

_____ A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

_____ The estimated cost to the agency for enforcement of the proposed regulation.

_____ If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

_____ If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

Step 4: Draft and deliver and post Notice of Workshop(s), conduct workshop(s)

_____ Notice contains date, time, place of meeting and describes general subjects to be discussed. Notice complies with the Open Meeting Law or a separate agenda was created that complies with the Open Meeting Law.

_____ Notice sent on _____ to all persons on agency's rulemaking mailing list.

_____ Notice posted on _____ (at least 15 days before the workshop) at the following locations:

Step 5: Draft and post Notice of Intent to Adopt, Amend or Repeal Regulation, deposit copy of proposed regulation and notice with State Library and Archives Administrator (After receiving revised and approved draft of the regulation from the Legislative Counsel pursuant to NRS 233B.060.)

_____ **Notice complies with Attorney General's form of notice (NAC 233B.010)**

_____ **Agenda pursuant to the Open Meeting Law prepared and posted no later than 9 a.m. 3 working days prior to the hearing.**

_____ **Deadline for receipt of written comments:** _____

_____ **Deposited with State Library and Archives Administrator on:** _____

_____ **Notice sent on _____ to all persons on agency's rulemaking mailing list.**

_____ **Notice posted on _____ (at least 30 days before the hearing) at the following locations:**

_____ **Notice mailed to the following persons or organizations:**
(The agency must mail a copy of the notice and text of the proposed regulation to the librarian of the main public library in each county in which the agency does not maintain an office. NRS 233B.0607(1)(c))

_____ **Describe any other attempts to provide notice:** _____

_____ **Hearing date(s), time(s), and location(s):** _____

_____ Describe arrangements made for taking minutes and either making an audio recording the hearing or having a certified court reporter provide a written transcript:

Step 6: **Conduct the public hearing**

_____ Name of agency conducting public hearing: _____

_____ Introduction and explanation of proposed regulation, where it may
inspected, purpose of hearing, and procedure for taking oral comments.
Make extra copies of proposed regulation available for inspection.

_____ Date of any extension for submission of written comments:

_____ **Summary of comments from the public or affected businesses:**
(The agency must indicate in its informational statement the number of persons who attended each hearing,
testified at each hearing, and submitted written comments regarding the proposed regulation. NRS 233B.066(1))

Step 7: **Consider public comment**

_____ **Hearing with board or commission to discuss public comment on
proposed rule conducted on _____** (check compliance with Open Meeting
Law.)

_____ **Describe comments of board or commission and any changes made to
rule resulting from public comment:**

(If any substantive changes are made to the rule as the result of public or other comment, the rule must be re-submitted to the Legislative Counsel to review and revise the language as appropriate for incorporation in the Nevada Administrative Code. If the regulation is submitted for this review between July 1 of an even-numbered year and July 1 an odd-numbered year, it must be adopted as a temporary regulation. See Step 9.)

Comments: _____

Step 8: Adopt the rule

_____ **Prepare Notice of Adoption of Regulation**

_____ **Informational statement:**

_____ **Description of how comment from public and affected businesses was solicited.**

_____ **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

_____ **Summary of response from public and affected businesses.**

_____ **Explanation of how interested persons may obtain a copy of summary.**

_____ **If regulation was adopted without change, summary of reasons for adopting without change.**

_____ **Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

_____ **Cost of enforcing the regulation.**

_____ **Explanation of any other regulations which this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

_____ **If the regulation includes provisions that are more stringent than a federal regulation which regulated the same activity, a summary of such provisions.**

_____ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

_____ **Regulation adopted on:** _____

_____ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

_____ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to Legislative Counsel on:** _____

_____ **Regulation approved by Legislative Commission or Subcommittee to Review regulations on:** _____

_____ **If Legislative Commission or Subcommittee to Review Regulations objected to rule based on lack of conformity with statutory authority and legislative intent:**

Regulation revised and resubmitted on: _____

Comments: _____

_____ **Filed with Secretary of State on:** _____

_____ **Copy bearing Secretary of State's seal filed with State Library and Archives Administrator on:** _____

_____ **Regulation effective on:** _____

_____ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)**

_____ **Copy of adopted regulation sent to Legislative Counsel (temporary regulation)**

_____ **Regulation scheduled for review on:** _____

Step 9: Convert temporary regulation to permanent regulation

_____ Temporary regulations expire on November 1st of the odd-numbered year following the legislative session during which they were adopted. Allow approximately 60 days before the expiration date to submit the temporary regulation as a permanent one to the Legislative Counsel.

_____ Submit temporary rule to Legislative Counsel Bureau (Complete Step 2)

_____ Adopt temporary rule as a permanent rule:

_____ Provide notice of workshop(s), notice of intended action and hold a public hearing. (Complete steps 3, 4, and 5)

_____ Informational statement:

_____ Description of how comment from public and affected businesses was solicited.

_____ A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.

_____ Summary of response from public and affected businesses.

_____ Explanation of how interested persons may obtain a copy of summary.

_____ If regulation was adopted without change, summary of reasons for adopting without change.

_____ Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.

_____ Cost of enforcing the regulation.

_____ Explanation of any other regulations which this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.

_____ If the regulation includes provisions that are more stringent than a federal regulation which regulated the same activity, a summary of such provisions.

_____ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

_____ **Regulation adopted on:** _____
(Prepare *Notice of Adoption of Regulation*)

_____ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

_____ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to Legislative Counsel on:** _____

_____ **Filed with Secretary of State on:** _____

_____ **Copy bearing Secretary of State's seal filed with State Library and Archives Administrator on:** _____

_____ **Regulation effective on:** _____

_____ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)** _____

_____ **Copy of adopted regulation sent to Legislative Counsel (temporary and emergency regulation)**

_____ **Regulation scheduled for review on:** _____

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the(Adoption) (Amendment)

(Repeal).... of Regulations of the

.....(Name of Agency).....

The(Name of Agency)..... will hold a public hearing at(time).....m., on(date)..... 20..., at(Address of Hearing Room)..... The purpose of the hearing is to receive comments from all interested persons regarding the(Adoption) (Amendment) (Repeal).... of regulations that pertain to chapter(Number of Chapter) of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

(In this space, state:

1. The need for and the purpose of the proposed regulation or amendment.
2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.
3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:
 - (a) Both adverse and beneficial effects; and
 - (b) Both immediate and long-term effects.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
8. Whether the proposed regulation establishes a new fee or increases an existing fee.)

Persons wishing to comment upon the proposed action of(Name of Agency)..... may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to(Name and Address of Agency)..... Written submissions must be received by the(Name of Agency)..... on or before(Date)..... If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the(Name of Agency).....may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be available at(Name and Address of each Office of the Agency)....., and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

(Include in this space the locations at which the notice was posted pursuant to the provisions of chapters 233B and 241 of Nevada Revised Statutes.)

****THIS NOTICE OF INTENT TO ACT UPON A REGULATION DOES NOT SATISFY THE OPEN MEETING LAW REQUIREMENTS FOR AN AGENDA. THEREFORE, PLEASE BE SURE TO PREPARE A SEPARATE AGENDA. SEE NRS 233B.061(5).****

Notice of Workshop to Solicit Comments on Proposed Regulation

The(Name, Address and Telephone Number of Agency)..... is proposing the(Adoption) (Amendment) (Repeal).... of regulations pertaining to chapter(chapter number)..... of Nevada Administrative Code. A workshop has been set for(time)....m., on(date).... 20..., at(Address of Meeting Room)..... The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

(Describe here the general topics to be discussed.)

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the(Name, Address and Telephone Number of Agency)..... A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

(Include in this space the locations at which the notice was posted)

Date: _____

****THIS SAMPLE NOTICE MAY NOT MEET ALL REQUIREMENTS OF THE OPEN MEETING LAW. PLEASE BE SURE TO MODIFY THIS NOTICE TO COMPLY WITH NRS CHAPTER 241 OR PREPARE A SEPARATE AGENDA. SEE NRS 233B.061(5).****

NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library
900 North Roop Street
Carson City, Nevada 89701-3101

Churchill County Library
553 South Main Street
Fallon, Nevada 89406-3306

Las Vegas-Clark County Library District
Headquarters
833 Las Vegas Boulevard North
Las Vegas, Nevada 89101-2062

Douglas County Public Library
1625 Library Lane
Minden, Nevada 89423-0337

Elko County Library
720 Court Street
Elko, Nevada 89801-3397

Esmeralda County Library
Corner of Crook & 4th Street
P.O. Box 430
Goldfield, Nevada 89013-0430

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445-3095

Battle Mountain Branch Library (Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Mineral County Public Library
110 1st Street
Hawthorne, Nevada 89415

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Storey County Public Library
95 South "R" Street
Virginia City, Nevada 89440

Tonopah Public Library (Nye County)
167 South Central Street
Tonopah, Nevada 89049

Washoe County Library System
301 South Center Street
Reno, Nevada 89501-2102

White Pine County Library
950 Campton Street
Ely, Nevada 89301

SECRETARY OF STATE
FILING DATA

**Form For Filing
Administrative Regulations**

Agency _____

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: **PROPOSED** **ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action _____

Authority citation other than 233B _____

Notice date _____

Date of Adoption by Agency

Hearing date _____

NOTICE OF ADOPTION OF REGULATION

The (Name of Agency)..... adopted regulations assigned LCB File No. which pertain to chapter(chapter number)..... of the Nevada Administrative Code on(Date)..... A copy of the regulations as adopted is attached hereto.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R095-05**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 348A.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of industrial development bonds as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Office of Business Finance and Planning (OBFP), www.dbi.state.nv.us/bfp/, mailed to all county libraries in Nevada and posted at the following locations:

Department of Business and
Industry
788 Fairview Dr. #100
Carson City, Nevada 89701

Grant Sawyer Building
555 E. Washington Blvd., Suite
4900
Las Vegas, Nevada 89101

Legislative Building
401 South Carson Street
Carson City, Nevada 89710

Nevada Dept. Of Cultural
Affairs
100 Stewart St.
Carson City, Nevada 89701

The Bradley Building
2501 East Sahara Ave.
Las Vegas, Nevada 89104

A workshop was held in conjunction with a meeting of the special committee to provide advice on private activity bonds (Volume Cap Committee) established pursuant to NAC 348A.280 on March 25, 2005, and the minutes of that meeting, attached hereto, contain a summary of the discussion held regarding the proposed amendments. Thereafter, on or about July 12, 2005, the Director of the Department of Business and Industry (Director) issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed amendments the suggestions of the parties attending the March 25th workshop as well as the recommendations of the Volume Cap Committee.

An additional workshop and public hearing was held on September 1, 2005. At that workshop and hearing John Swendseid, an attorney representing Clark County, Nevada, testified in support of the proposed amendments.

A copy of this summary of the public response to the proposed regulation may be obtained from the Office of Business Finance and Planning, 788 Fairview Drive, Suite 100, Carson City, Nevada 89701, 775-687-4246, or email to dwalther@dbi.state.nv.us.

2. **The number persons who:**
- (a) **Attended each hearing:** March 25, 2005 – 10; September 1, 2005: 4
 - (b) **Testified at each hearing:** March 25, 2005 – 10; September 1, 2005: 3
 - (c) **Submitted to the agency written comments:** No written comments were submitted.

3. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #1.

4. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The permanent regulation was adopted on September 1, 2005 and included all of the changes suggested at the workshop and Volume Cap Committee meeting held on March 25, 2005.

5. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
- (a) **Both adverse and beneficial effects; and**
 - (b) **Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

Local governments will have additional, although minor, requirements for the allocation and use of state volume cap in the immediate and long-term which should not involve any additional expense. Local governments and other persons who benefit from the use of state volume cap, including the public, will benefit in the immediate and long-term from provisions that will provide greater assurance that volume cap authority is not wasted.

(b) Both immediate and long-term effects.

See Item # 5(a)

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

N/A

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

N/A

10. Is the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Director has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination the Director considered the fact that the proposed amendment only applies to activity by local and state government officials and imposes no direct requirements on any private businesses.

Form for Review of Regulations

(10-Year Review)

NRS 233B.050(1)(e) states:

1. In addition to other regulation-making requirements imposed by law, each agency shall:

...

(e) Review its regulations at least once every 10 years to determine whether it should amend or repeal any of the regulations. Within 30 days after completion of the review, the agency shall submit a report to the Legislative Counsel for distribution to the next regular session of the Legislature. The report must include the date on which the agency completed its review of the regulations and describe any regulation that must be amended or repealed as a result of the review.

(Attach additional sheets if necessary)

Agency Reporting: _____

Address: _____

Contact Person: _____

Contact Telephone: _____

Contact Email: _____

Date of Last Review: _____

Date of Current Review: _____

**Chapters or Sections of
Nevada Administrative
Code Reviewed:** _____

**Revisions to regulations
made or proposed as result
of review:** _____

**Date Filed With Legislative
Counsel:**

Comments:

REVISER'S NOTES

2011

SB 7 (Act of May 24, 2011, ch. 97, 2011 Nev. Stat. ____), effective October 1, 2011, requires that an agency make copies of its proposed emergency regulations available to the public and on its website prior to hearings to consider the proposed emergency regulations and prior to filing the proposed regulations with the Office of the Secretary of State pursuant to NRS 233B.070(3). SB 440 (Act of June 16, 2011, ch. 439, 2011 Nev. Stat. ____), effective July 1, 2011, amends NRS 233B.039 slightly exempting the Silver State Health Insurance Exchange from the requirements of Chapter 233B. AB 201 (Act of May 24, 2011, ch. 92, 2011 Nev. Stat. ____), effective May 24, 2011, amends NRS 233B.066 and specifies that additional information be provided by the agency in its informational statement regarding persons identified as testifying at each hearing and/or providing written comments to the agency regarding the proposed regulations. AB 575 (Act of June 17, 2011, ch. 528, 2011 Nev. Stat. ____), effective July 1, 2011, slightly amends NRS 233B.067 to allow alternate members of the Legislative Commission to review regulations pursuant to this provision.

2009

SB 267 (Act of June 3, 2009, ch. 419, 2009 Nev. Stat. 2284), effective July 1, 2009, requires that an agency wait to receive the approved or revised text of its proposed regulation from the Legislative Counsel Bureau before giving notice of its intended action, that adopted permanent regulations and requested adopted temporary regulations be affirmatively approved or objected to by the Legislative Commission or the Subcommittee to Review Regulations, that all workshops and public hearings required pursuant to NRS 233B.061(2) and (3) be conducted in accordance with the provisions of NRS Chapter 241 (Nevada's Open Meeting Law), and that the agency make at least one copy of the agenda for the public meeting at which the agency will consider a regulation, the text of the proposed regulation, and any supporting material provided to the members of the public body available to the public at the meeting to which the documents pertain. SB 382 (Act of June 3, 2009, ch. 421, 2009 Nev. Stat. 2297), effective July 1, 2009, amends NRS 233B.039 slightly regarding the application of the Chapter to the Division of Health Care Financing and Policy of the Department of Health and Human Services. AB 6 (Act of May 18, 2009, ch. 92, 2009 Nev. Stat. 2298), effective May 18, 2009, amends NRS 233B.039 slightly regarding the application of the Chapter to the Department of Corrections. AB 123 (Act of May 22, 2009, ch. 149, 2009 Nev. Stat. 532), effective May 22, 2009, requires that agencies that adopt a regulation relating to standards for the issuance or renewal of licenses, permits, or certificates of registration issued to a person or facility regulated by the agency shall also deliver one copy of the regulation to the Legislative Committee on Health Care within ten days after the regulation is filed with the Secretary of State. AB 475 (Act of May 19, 2009, ch. 134, 2009 Nev. Stat. 482), effective May 19, 2009, directed the Legislative Counsel Bureau to make such changes as necessary so that the Nevada Revised Statutes and Nevada Administrative Code are gender neutral.

2007

SB 367 (Act of May 31, 2007, ch. 248, 2007 Nev. Stat. 871), effective July 1, 2007, requires an agency to submit a proposed permanent regulation to the Legislative Counsel Bureau at least 30 days before giving notice of its intent to adopt, amend or repeal the regulation. The notice of intent must include a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel Bureau. An agency may not conduct a workshop on the same day as the public hearing on the proposed regulation. SB 491 (Act of May 31, 2007, ch. 255, 2007 Nev. Stat. 906), effective July 1, 2007, requires that language in the Nevada Administrative Code that refers to persons with physical, mental, or cognitive disabilities is to be respectful and refer to the person before referring to his disability.

2006

Legislation enacted during the 2003 and 2005 sessions of the Nevada Legislature required the following changes to the process of adopting administrative regulations: SB 329 (Act of June 9, 2003, ch. 358, 2003 Nev. Stat. 2003), effective October 1, 2003, allows a Legislator to request Legislative Commission review of an adopted but not yet effective temporary regulation. After adopting a temporary regulation, the agency must wait at least 35 days before filing the regulation with the Secretary of State. SB 421 (Act of June 13, 2005, ch. 373, 2005 Nev. Stat. 1404), effective July 1, 2005, requires agencies to keep, retain and make available for public inspection an audio recording or written transcript of a

public hearing on a proposed regulation in addition to written minutes. SB 17 (Act of June 17, 2005, ch. 498, 2005 Nev. Stat. 2687), effective June 17, 2005, removed provisions which allowed the filing of permanent regulations without a review by the Legislative Commission, made the appointment of a Subcommittee to Review Regulations mandatory, and revised the procedure for the Legislative Commission to object to administrative regulations. An agency that submits a regulation to which the Legislative Commission objects must revise the regulation and resubmit it until the objection is removed or the regulation will not become effective. SB 488 (Act of June 13, 2005, ch. 383, 2005 Nev. Stat. 1477), effective July 1, 2005, requires an agency to prepare a statement identifying the methods it used in determining the impact of a proposed regulation on a small business and to include the statement in the notice of intent to act on the proposed regulation.

1999

The 1999 Nevada Legislature passed two bills that affect the adoption of administrative regulations. Assembly Bill 12 (Act of June 8, 1999, ch. 472, 1999 Nev. Stat. 2405) revises the definition of “regulation” set forth in NRS 233B.038 to include “[t]he general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.” AB 12 also expands the list of things that do not constitute a regulation. Among other things, the revised definition: (1) applies only to “the general application” of a written policy, interpretation, process, or procedure; (2) applies only to a *written* policy, interpretation, process, or procedure; (3) applies only where the agency is attempting to assess a fine, monetary penalty, or monetary interest; (4) does not apply to a declaratory ruling or advisory opinion issued in a specific case; (5) does not apply to a finding or decision in a contested case; (6) does not apply to a published opinion of the Attorney General; and (7) does not apply where a person had “sufficient prior actual notice” of the agency’s policy, interpretation, process, or procedure.

AB 486 (Act of May 31, 1999, ch. 443, 1999 Nev. Stat. 2070), effective January 1, 2000, adds several additional steps to the process of adopting administrative regulations. It requires an agency to consider, *before* conducting a workshop on a proposed regulation, whether the regulation will have an impact on a small business, defined as one which employs fewer than 150 full-time or part-time employees. If the proposed regulation will have an impact on small businesses, the agency must attempt to consult with owners of such businesses, consider ways to reduce the impact, and prepare a small business impact statement. The small business impact statement requires information similar to that contained in the informational statement required for regulations generally. AB 486 also creates a procedure whereby a small business can formally object to the adoption of a regulation. If an objection is filed, the agency must consider whether the objection has merit and, if it so finds, must amend the regulation.

1997

The 1997 Nevada Legislature passed two bills that affect the procedural requirements for the adoption of administrative regulations and an additional bill that will increase public access to regulations. Assembly Bill 120 (Act of June 6, 1997, ch. 127, 1997 Nev. Stat. 275) implements Ballot Question 5, an amendment to the Nevada Constitution, approved by the voters, that authorizes the Legislature to object to the adoption of regulations it finds exceed statutory authority or are inconsistent with legislative intent. If the commission objects to a regulation, it is returned to the agency which may revise it and continue to resubmit it until the objection is satisfied. If the agency elects not to revise the objectionable regulation, the commission may suspend the filing of the regulation until the 30th day after the next regular session of the Legislature. Within the first 30 days of that session, the Legislature may, by concurrent resolution, declare that the regulation shall not become effective. If the Legislature does not act upon an objection within the first 30 days of the session, the regulation will be filed and become effective.

Assembly Bill 122 (Act of May 28, 1997, ch. 97, 1997 Nev. Stat. 185) requires additional information to be included in the notice of intent to adopt regulations if the regulation overlaps or duplicates a federal regulation, is required pursuant to federal law or contains more stringent requirements than a federal law addressing the same subject. AB 122 also amends NRS 233B.050 to require agencies to review *all* their regulations at least once every 10 years to determine whether any should be repealed or amended and report the results to the Legislature. The bill also amends NRS 233B.061 to require that an agency conduct at least one workshop to solicit comments from interested persons on the general topics addressed in proposed regulations.

Assembly Bill 120 (Act of July 11, 1997, ch. 397, 1997 Nev. Stat. 1389) requires the Legislative Counsel Bureau to publish a register of administrative regulations. The register, to be distributed to and maintained by several state and local offices as well as on the Internet, must include the proposed and adopted text of regulations, including revisions, the notice of intent to adopt regulations, the written notice of adoption required by NRS 233B.064, the informational statement required by NRS 233B.066, and the effective date of the regulation. The Legislative Counsel Bureau is also directed to include in the Administrative Code the date on which each agency last reviewed its regulations and the citation of authority by which each section of a permanent regulation has been adopted.

1995

The 1995 Nevada Legislature passed two bills that affect the procedural requirements for the adoption of administrative regulations. Senate Bill 277 (Act of May 17, 1995, ch. 106, 1995 Nev. Stat. 128) became effective on May 17, 1995 and contains several new procedural requirements including changes in the way notice is given of public hearings on proposed regulations. Senate Bill 573 (Act of July 5, 1995, ch. 672, § 3, 1995 Nev. Stat. 2580), passed and approved on July 5, 1995, contains several technical amendments to Senate Bill 277. Among other things, SB 277: (1) requires additional information to be included in the notice of a public hearing on a proposed regulation; (2) requires the notice be posted at the public library in all counties in which the adopting agency does not maintain an office; and (3) requires additional information to be included in the informational statement that must accompany an adopted regulation.

Assembly Bill 286 (Act of July 1, 1995, ch. 160, 1995 Nev. Stat. 239) became effective on July 1, 1995 and creates additional requirements for a notice of intent to act upon a proposed regulation. The notice must now include, among other things, a statement of the estimated economic effect of the regulation on the business which it is to regulate and on the public, a description of both adverse and beneficial effects, both immediate and long-term, and the estimated cost to the agency to enforce the proposed regulation.

—Sarah A. Bradley, Editor